

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 200 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SURESH H RAJPUT

Versus

ABDULKADAR GULAMHUSAIN

Appearance:

MR PRANAV G DESAI for Petitioner

MR JV DESAI for Respondent No. 1 to 4

MR B Y MANKAD, ADDL. PUBLIC PROSECUTOR for
Respondent No. 5

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 17/09/98

ORAL JUDGEMENT

Original complainant, Food Inspector, being aggrieved by an order of acquittal recorded by Judicial Magistrate, First Class, Vadodara in Criminal Case No. 6194 of 1982 wherein the accused were tried for an offence punishable under section 16 (1) (a) (i) of the Prevention of Food Adulteration Act, has preferred this

appeal.

2. From the record it transpires that on 22.6.1982, Food Inspector visited Khaiyam Restaurant, respondent No.4 [original accused No.4] where respondent No.2 [original accused No.2] was present and was looking after the sale of food articles prepared in the restaurant. After calling a Panch, in the presence of the panch, sample of Ice-cream was collected which was packed in three containers after dividing the same. One part was forwarded to the Public Analyst, who, on examination, opined that the article is not according to the standard prescribed under the Prevention of Food Adulteration Act (hereinafter referred to as the Act) and the Prevention of Food Adulteration Rules (hereinafter referred to as the Rules). In view of this report, after obtaining consent, the prosecution came to be launched against the present respondents No. 1 to 4. The respondents No. 1 and 3 were prosecuted on the allegations that they were the partners of accused No.4, along with the accused No.2. The trial Court, on appreciation of evidence, held that the procedure has not been followed in the instant case and there is breach of provisions contained in section 13 (2) of the Act, and, therefore, the accused deserve an order of acquittal.

3. Neither the learned advocate appearing for the original complainant nor the learned Additional Public Prosecutor appearing in the matter could point out any circumstance from the judgment by which it can be said that the trial Court has committed an error. Samples of food for the purposes of analysis are required to be taken in clean and dry bottles or jars or in other suitable containers. Duty is cast upon the prosecution not only to comply with the mandatory provisions of law by using clean and dry bottles for storing the sample, but also to lead evidence during the trial before the trial Court that the bottles were clean and dry.

4. Attention of the Court was drawn to the chief examination of the complainant wherein he has stated that after dividing the sample into three equal parts, the same was collected in three dry and clean bottles which were shown to the panch witness and the vendor. It was submitted before me that in view of this positive evidence, the Court can draw the presumption that bottles were dry and clean and when he has stated on oath, it is satisfactorily proved beyond reasonable doubt that the bottles used were clean and dry. Mr. Desai, learned advocate who appears for the accused pointed out from the cross examination wherein this witness has admitted that

he was supplied the bottles by the Local (Health) Authority; He has not cleaned the bottles; He cannot state as to at what point of time the Peon must have cleaned the bottles. He has specifically stated that in his presence bottles were not cleaned. On a question being put to him he has stated that he does not want to examine the Peon. It is in this background that evidence of Food Inspector is required to be considered. In the cross examination as he has admitted that he has not cleaned the bottles and he is not aware as to when the same were cleaned, the only inference that can be drawn is that the Food Inspector has not bothered to see that samples are collected in dry and clean bottles in compliance with rule 14 of the Rules. Therefore, the trial Court has rightly given benefit of doubt to the accused, and the order of acquittal is not required to be interfered.

The appeal is dismissed.

5. On behalf of the State, Mr. Mankad, learned Additional Public Prosecutor submitted that Food Inspector is discharging duties concerning health of public and if they collect the samples in the manner so as to be advantageous to the wrong doer, action must be taken against them.

6. One has to also look at the object of the Act and the purpose of the Act. The object and purpose of the Act are to eliminate the danger to human life from the sale of unwholesome articles of food. The legislature has provided minimum punishment. The Act is enacted to curb the wide spread evil of food adulteration and is a legislative measure for social defence. It is intended to suppress a social and economic mischief and evil which attempts to poison, for monetary gains, the very sources of sustenance of life and the well being of the community. The evil of adulteration of food and its effects on the health of the community are assuming alarming proportions. The offence of adulteration is a socio-economic offence. The construction appropriate to a social defence legislation is, therefore, one which would suppress the mischief aimed by the legislation and advance the remedy. The offence under the Act are really acts prohibited by the police-powers of the State in the interest of public health and well being. The prohibition is backed by the sanction of a penalty. The offences are strict statutory offences. [paras 7 and 8 of AIR 1989 SC 1022 Dineshchandra-Supra]. Looking to the object and purpose of the Act, the Food Inspector is performing an important duty. However, the duty of the

Food Inspector does not end with the collection of samples. Duty is cast upon the Food Inspector not only to comply with the mandatory provision of law but also leading evidence at the trial to the satisfaction of the Court that the provisions of law are strictly complied with.

7. In the instant case, it is required to be noted that the Food Inspector in his evidence, in the examination in chief, has deposed about the compliance of rules. He has taken training for a period of 45 days and since 1979 he was discharging his duties as a Food Inspector. It is the duty of the Food Inspector while collecting the samples to follow the rules provided under the Act and has to also follow the procedure laid down under the Act. Reading the chief examination, it become clear that he has understood the procedure which is required to be followed. He has specifically stated that samples were collected in dry and clean bottles. If one turns to the cross-examination, it becomes clear that he has given evidence in such a way so as to indicate that though he has knowledge of the rules, he is not following the rules. He has clearly stated that he has not cleaned the bottles. He was not able to say as to when the Peon has cleaned the bottles. he has clearly stated that in his presence the bottles were not cleaned. He further stated that he does not want to examine the Peon who cleaned the bottles. What does it indicate? Was he not aware that dry and clean bottles were to be used for the purpose of collecting the samples? It was for the Food Inspector to satisfy the Court that he has collected the samples in dry and clean bottles. If he has not cleaned the bottles or if under his supervision the bottles were not cleaned and dried, then he had no knowledge about the bottles being dry and clean. Despite this, in the chief examination, he has stated that the samples were collected in dry and clean bottles. The only inference from the record that can be drawn is that in breach of the rules, negligently the Food Inspector has acted. In the case of M.B. RISALDAR VS. RADHESHYAM reported in 21 (2) GLR 136, this Court dealt with a case which arose from the order passed by Judicial Magistrate First Class (Municipal), Baroda. The trial Court acquitted the accused on the ground that the bottles in which the samples were taken are not proved to be clean and dry. The Court in paragraph 7 expressed the views that:

"Even I feel that when a witness testifies to the effect that the glass bottles were cleaned and dried, a mere visual appearance to the naked eye may not be sufficient sometimes. If no questions

might have been put to him as to how he can say that the glass bottles were cleaned and dried, probably the matter would have ended there. But he has given out that the peon had cleaned and dried the bottles and put them into the cupboard. In this state of the evidence, it was the duty of the prosecution to examine that peon to show that bottles were properly cleaned and dried and they were put into the cupboard and properly closed."

Thus, since long, by a reported decision, this Court has pointed out as to the nature of procedure to be followed and non-compliance affects the prosecution case.

8. The case of SUDHIRCHANDRA B JOSHI, FOOD INSPECTOR, BARODA vs. ARVINDKUMAR NARANBHAI PATEL & ORS. [1995 (2) GLH (U.J.) 24] which is also from Baroda wherein in the cross examination, the complainant admitted that the sample bottles were not cleaned at the vendor's place; The sample bottles were delivered by the Stores Department; Food Inspector had no information as to when and by whom these bottles were cleaned in the Stores; He was not in a position to state whether his Peon cleaned the bottles. In this situation, this Court confirmed the acquittal order passed by the trial Court.

9. It is the duty of a Food Inspector to follow the rules while taking samples. If a Food Inspector collect samples without following the procedure, it can be said that he is not discharging his duties in accordance with law and in disregard to the rules, is collecting the samples which amounts to negligence. The duty of the Food Inspector does not end with the collection of samples. Duty is cast upon the Food Inspector not only to comply with the mandatory provision of law by using clean and dry bottles for storing the sample, but also leading evidence at the trial Court that the bottles used were clean and dry. Such evidence is there; however, cross examination is destroying the said version. Looking to the cross-examination, it is clear that the Food Inspector has not bothered to collect the samples as per the Rules. If the Food Inspectors for the sake of taking samples are taking it and that too negligently in disregard to the Rules, and are launching prosecution against the vendors, it amounts to nothing but harassment to the vendors and waste of public time. Therefore it would be for the Baroda Municipal Corporation, the Local (Health) Authority in the instant case, to take appropriate action against the Food Inspector for having not taken the samples of food in compliance with the rules. The Municipal Commissioner, Baroda shall report

to this Court about the action taken in this matter
within three months from today. For that purpose only,
this matter shall be notified before me on 17th December
1998 at 4.45 pm.

csm./ -----